

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10740 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MALTIBEN SHAMATBHAI BALDANIA

Versus

AMRELI DISTRICT PANCHAYAT

Appearance:

MR YN RAVANI for Petitioner

MR JD AJMERA for Respondents No.1, 2 and 3

MR MUKESH A PATEL for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/09/1999

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. On apprehension of termination of services, the petitioner has come up before this court by this petition under Article 226 of the Constitution and prayed for quashing and setting aside the order of termination which is likely to be passed against her by the

respondent-authorities and declare that the petitioner is permanent employee of the District Panchayat, Amreli.

3. From the record of the special civil application I find that the first appointment given to the petitioner on 3rd May, 1991 was purely on urgent temporary basis and subject to the condition that she has to undergo the process of selection as and when it is undertaken by the District Panchayat Services Selection Committee (hereinafter referred to as 'the Committee'). This appointment was not only adhoc and subject to the aforesaid condition but it was also a fixed term appointment which was extended from time to time.

4. It is not in dispute that in the meanwhile the petitioner applied for the post and the Committee has made the selection and prepared a merit list for 12 vacancies of Female Health Workers which had been advertised. In the merit list, the name of the petitioner is at Sr. No.16 and rightly she has to make a room for the selectees to be appointed in her place. Secondly, her appointment aforesaid was subject to the condition that she has to appear before the Committee that does not mean that even if her name is there at any number that is beyond the number of the posts to be filled in, she has to be made permanent and continued in service. She has to stand in merits, meaning thereby, her name should be within the number of posts which have been advertised or where if 12 persons who are there in the merit list at Serial Nos.1 to 12 have not joined or either of them have not joined then within the proximity of merits in the waiting list. It is not the case here. This writ petition is wholly misconceived and none of the legal or fundamental rights of the petitioner are being infringed which can be enforced by this court.

5. After non-selection of the petitioner by the Committee, the respondent-District Panchayat is perfectly within its competence to terminate the services of the petitioner which what it wanted to do but the petitioner before her services could have been brought to an end, approached to this court and this court has protected her by grant of interim relief.

6. Learned counsel for the petitioner made a feeble attempt to make out a case of discrimination by referring the pleadings made in para-6 of the special civil application. In para-6, it is stated that Tank Lilavatiben Nathalal who was selected by the Committee after the petitioner has been continued in service. The petitioner has not given all the detailed facts in this

respect but whatever averments made therein goes to show that in second selection Tank Lilavatiben has been selected, meaning thereby, she has been placed within the number of posts to be filled in, in the merit list and she got the appointment. This selection of Lilavatiben has no relevance whatsoever and it cannot be said to be a case of discrimination.

7. Then the petitioner made reference to the case of three other Female Health Workers, namely, Hansaben Chavda, Vilasben Makwana and Jyotsanaben Pansuriya. However, these names have been referred only to show that these are the similarly situated persons whose services have been terminated, and to show that she has rightly the apprehension of termination of her services. These pleadings are hardly of any substance and relevance to the matter.

8. Lastly, the counsel for the petitioner contended that the petitioner is working for last more than nine years and the respondents may be given direction to continue her in services. I fail to see any justification in this contention also. The continuation of the petitioner in the services is only because of the interim relief which has been granted by this court in favour of her. Once the Court has protected the petitioner by grant of interim relief, the respondents have no option but to comply with the order of this court as violation thereof shall amount to the contempt of the order of this court. It is no more res integra that the interim order ultimately has to be merged in the final order and reference in this respect may have to the decision of the Apex Court in the case of N. Mohanan vs. State of Kerala and Ors. reported in 1997 (2) SCC 556.

9. Learned counsel for the petitioner, on being asked by the Court, admitted that no person who is junior in merit than the petitioner has been given the appointment on the post of Female Health Worker. Provisions of articles 14 and 16 of the Constitution are not violated in this case and the action of the respondents to terminate the services of the petitioner in these facts cannot be said to be arbitrary and perverse.

10. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted by this Court stands vacated. The petitioner is directed to pay Rs.2000/- as costs of this petition to the respondent-District Panchayat.

zgs/-